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January 25, 2018

Thomas R. Davis, Director
U.S. Department of Housing and Urban Development
Office of Recaptalization
The Weaver Federal Building
451 7th Street, SW, Room 6230
Washington, DC 20410

Sent by email to and by First Class Mail

RE: Complaint Regarding Violations of RAD Authorizing Statute, RAD Notice, RAD Use Agreement, HAP Contracts, and RAD Conversion Commitment (RCC), in Baltimore City, MD.

Respondents:

- 1) Allendale Apartments Limited Partnership and its agents, employees and managers;
- 2) BPT LLC and its agents, employees and managers;
- 3) Bernard E. Mason, LLC and its agents, employees and managers;
- 4) Broadway Overlook, LLC, and its agents, employees, and managers;
- 5) New Brentwood, LP and its agents, employees, and managers;
- 6) Homes for Mount Vernon Limited Partnership and its agents, employees and managers;
- 7) Ellerslie General LLC and its agents, employees and managers;
- 8) Govans Manor (GM) Maryland LLC and its agents, employees and managers;
- 9) Hollins House, LLC and its agents, employees, and managers;
- 10) LVTE, LLC and its agents, employees, and managers;
- 11) TCB McCulloh Apartments, LLC, and its agents, employees, and managers;
- 12) Primrose Place Apartments, LLC and its agents, employees, and managers;
- 13) Wyman House, LLC and its agents, employees, and managers; and
- 14) The Housing Authority of Baltimore City.

Hereinafter referred to collectively as "The Respondents."

PHA: Housing Authority of Baltimore City (HABC)
Janet Abrahams, Executive Director
417 E. Fayette St.
Baltimore, MD 21202

Dear Mr. Davis:

Disability Rights Maryland is writing to make a formal complaint regarding the routine failure of the above named Respondents, their agents, employees, and managers, to guarantee residents of Rental Assistance Demonstration (RAD) properties the benefit of a grievance process as required by the RAD Authorizing Statute, HUD's RAD Notice, the RAD Use Agreement, the Housing Assistance Payment (HAP) Contract, and the RAD Conversion Commitment, when facing termination of their tenancy for alleged violations of their lease.

The RAD program guarantees "[t]hat tenants of such properties with assistance converted from assistance under section 9 [of the United States Housing Act of 1937, as amended], maintain the same rights under conversion as those provided under section 6 and section 9 of the [United States Housing Act (USHA) of 1937, as amended]." See, Rental Assistance Demonstration Consolidated and Further Continuing Appropriations Act, 2012 (PL 112-55), paragraph 5. The RAD Notice requires converting properties to provide specific written notice and afford access to a legitimate Section 6 Grievance Process to residents. Core principles of rights provided under Sections 6 and 9 of the USHA are the due process rights and opportunity to grieve adverse actions against the tenancy.

Grievance processes under Section 6 typically have two stages. First is the informal meeting stage, which encourages informal settlement of disputes. 24 C.F.R. § 966.54. Second is a formal grievance process that requires an impartial hearing officer(s) to render a written decision on the dispute and describe how this decision was rendered and any documents used in making this decision. 24 C.F.R. § 966.56. In addition to the preservation of Notice and grievance rights under Section 6 of the United States Housing Act (USHA), Respondents who receive Project Based Rental Assistance (PBRA) subsidy are also contractually obligated to provide tenants with the informal meeting requirements under 24 C.F.R. § 880.607.

Grievance processes under Section 6 may exclude only i) any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by other residents or employees of the PHA and ii) drug-related or violent criminal activity on or off the premises.¹

HABC and the RAD Owner/Management Entities named above agreed to formalize these tenant rights in the RAD LTA Grievance Policy and Procedures (**Exhibit 1**), which is incorporated into the RAD Use Agreement, the Housing Assistance Payment (HAP) Contract, the RAD Conversion Commitment, and each tenant's lease. However, **in practice, Owners are regularly ignoring these clearly stated tenant rights. Further, HABC has not taken effective steps to ensure RAD Owners' compliance.**

HUD's PIH 2016-17 (HA) provides that "PHAs and Project Owners are responsible at all times for ensuring that their RAD activities (including those activities implemented by their

¹ Under Section 6 of the USHA, PHAs may affirmatively exclude certain conduct from the grievance process. However, the RAD Notice does not explicitly permit converted entities to exclude any conduct from the Grievance Process.

agents, consultants, contractors, or other RAD team members) comply with all applicable fair housing and civil rights requirements. PHAs and Project Owners shall be accountable for all fair housing and civil rights compliance issues with respect to their RAD activities, whether those activities are undertaken directly or through agents, consultants, contractors, or other RAD team members.”

BACKGROUND

Respondents are the owners and management entities of RAD developments formerly owned and operated by the Housing Authority of Baltimore City (HABC) as public housing. On December 24, 2013, HUD approved HABC's request for a portfolio award under RAD to convert twenty-two (22) public housing developments (the "RAD Projects"), making possible the rehabilitation of the developments and their continued operation as affordable housing. HABC has received HUD approval to convert 4,023 mixed-population units to RAD. Respondents have been converting properties under RAD since approximately October 2015.

Because each of the RAD-converted properties is covered by a federal Consent Decree, *Bailey, et al. v. HABC, et al.* Case No. JFM-02-CV-225; and *United States v. HABC, et al.*, Case No. JFM-04-CV-03107, HUD required each of the Respondents and HABC to agree to special conditions under the RAD Conversion Commitment (R.C.C.). An example of such an RCC is included in **Exhibit 2**. One of the special conditions was compliance with the terms of the Long-Term Affordable (LTA) Criteria, the tenant selection and occupancy policies that HABC has required developers to utilize. HUD approved several waivers of PBRA Provisions under HABC's RAD conversions in its March 25, 2015 letter (**Exhibit 3**), stating, “HUD has an interest in HABC's ongoing compliance with *Bailey*, because HUD has an on-going role in monitoring and enforcing HABC's and other recipients' compliance with Section 504, Title II of the Americans with Disabilities Act, and the Fair Housing Act. Failure to continue the actions required by the *Bailey* Consent Decree at the RAD properties would likely give rise to their same violations of Section 504 that caused HUD to make the Bailey referral to DOJ more than a decade ago.” See. Pp.1-2.

Here are the specific issues we are seeing:

1. **Premature Notices to Vacate.** RAD Owners may not issue a Notice to Vacate until the resident has gone through the Grievance Process. See RAD LTA Criteria, page 39, VIII. Notice to Vacate: “The Notice to Vacate shall not be issued prior to the Hearing Panel's decision having been delivered by hand or by regular mail to the Complainant. Such Notice to Vacate must be in writing and specify that that if the Resident fails to quit the premises within the applicable statutory period, or by the termination date stated in the notice of termination, whichever is later, appropriate action for eviction will be brought against him/her and he/she may be required to pay court costs and attorney's fees if the Management Agent or Owner prevails in the eviction action.” **RAD owners do not appear to be including this specific language in their Notices to Vacate.**

Action Item: We request that HUD enforce HABC and RAD Owners/Agents' obligation not to issue a Notice to Vacate to a resident until the grievance process is completed. HABC and Owners/Agents should ensure that the Notice to Vacate contains the required language. DRM recommends that HABC require RAD owners to adopt consistent language for Notices to Vacate.

1a. "Proposed Termination Notices" should be required. Since RAD Owners/Agents may not issue a Notice to Vacate until the resident has the opportunity to participate in the Grievance Process, it logically follows that what should be issued to residents should be a *proposed* termination or lease violation notice. So the resident is on notice of the Owner/Agent's intention to terminate the tenancy, if she is unsuccessful in her grievance review.

Action Item: We ask HUD to require RAD Owners/Agents to use specific, consistent language in their proposed termination notices and Notices to Vacate. Some RAD owners appear to be relying on the PBRA regulations at 24 CFR 880 rather than the RAD LTA Criteria when they wish to terminate a resident from their housing. We ask that HUD require HABC to enforce RAD Owners/Agents' use of such consistent language in their proposed notices and Notices to Vacate.

2. **Notice of Grievance Process should be clearly stated in the proposed Notice to Vacate or proposed Notice of Lease Violation.** The Notices to Vacate that we have reviewed do not clearly indicate that the resident has the right to participate in an established Grievance Process. Some Notices provide only that the resident has the opportunity to request a meeting with management to discuss the termination. The RAD LTA Criteria, page 27-28, 12.2.1, Notice of Lease Termination, (a) provides that "When the Owner is required to afford the Resident the opportunity for a grievance hearing, the notice shall also: 1. Inform the Resident of the Resident's right to request a hearing in accordance with the Grievance Procedure (Exhibit 1); 2. Specify the judicial eviction procedure to be used by the Owner for eviction of the Resident, and state that HUD has determined that this eviction procedure provides the opportunity for a court hearing that contains the basic elements of due process as defined in HUD regulations; and 3) State whether the eviction is for criminal activity or for drug related criminal activity."

Action Item: We ask that RAD owners be required to provide a copy of the Grievance Policy as an attachment to every proposed termination notice. We realize that the resident's lease includes as an attachment a copy of RAD LTA Resident Grievance Policy and Appeals Procedure, but most residents will not be aware that this process applies to lease terminations, and while under the stress of receiving a termination notice may not remember to go back and read their lease. A copy of the Resident Grievance Policy should be included with any Notice of Proposed Termination so that residents are made aware of their rights to participate the Grievance Process.

3. **Letters Scheduling Informal Discussions are Unclear.** Follow-up communication from RAD Owners/Agents for residents that request an Informal Discussion is often confusing. In one client's case, the letter scheduling the Informal Discussion indicated it

was a “hearing” and that he would be able to present documents and bring witnesses. The letter appeared to confuse the Informal Discussion and the Grievance Hearing. Pursuant to the RAD LTA Grievance Policy and Appeals Procedure, an informal grievance hearing may be requested after a meeting with management fails to produce results acceptable to the resident.

Action Item: We ask that HUD ensure that HABC require RAD Owners to adopt consistent, clear language for letters scheduling Informal Discussions and Grievance Hearings.

4. **Breach of Lease Complaints Filed Early.** Breach of Lease complaints are being filed prior to the Grievance Policy being exhausted.

Action Item: If a tenant does not appear at an informal meeting to contest a proposed termination, there should be some written communication to the resident, indicating that the Informal Discussion was scheduled and the resident did not appear so the RAD Owner is issuing a Notice to Vacate (and attaching another copy of the Grievance Policy) prior to filing the eviction action in District Court. In this way, the resident would have the opportunity to request a Grievance Hearing and/or waiver of the Informal Discussion for good cause, if appropriate. Owners/Agents should wait the full 20 business days outlined in the RAD LTA Grievance Policy before issuing the Notice to Vacate, to ensure that the resident has the opportunity to request the Informal Discussion as provided in the Grievance Policy.

5. **Notice That the Grievance Policy Does Not Apply because the Termination is for Criminal Activity (or other excluded activity).** If the RAD Owner asserts that the reason for the proposed termination is criminal activity, the proposed termination notice should clearly state this, and also state that the resident is not able to participate in the Grievance Procedure because criminal activity is exempted from the Grievance Policy. Again, a copy of the Grievance Policy should be provided to the resident. In such a case, the resident is still entitled to respond to the owner to discuss the proposed termination, pursuant to 24 CFR § 881.104(c) (referring to the requirements at 24 CFR § 880.607(c). The PBRA Model Lease provides that tenants be given 10 days to request a meeting with the landlord to discuss a termination of tenancy. The proposed termination notice should also contain language indicating that HUD has determined that the judicial process for eviction in Maryland comports with due process protections.

HABC’s RAD LTA Criteria, p. 28, 12.2.1, Notice of Lease Termination, (b) states that “[w]hen the Owner is not required to afford the Resident the opportunity for hearing under the Grievance Procedure, the notice of lease termination shall: (1) State that the Resident is not entitled to a grievance hearing on the termination; (2) Specify the judicial eviction procedure to be used by the Management Agent for eviction of the Resident, and state that HUD has determined that this eviction procedures provides the opportunity for a court hearing that contains the basic elements of due process as defined in HUD regulations; and (3) State whether the eviction is for criminal activity or for drug-related criminal activity.”

Action Item: HABC should require RAD Owners to clearly inform residents when the Owner determines that the Resident not subject to the Grievance Policy, using the language provided above. In such a case, the proposed Notice of Lease Termination should clearly state that the resident has ten (10) days to meet with the landlord to discuss a termination of tenancy.

6. **Notice of Ability to Request Reasonable Accommodations.** Notices to Vacate and notices of termination fail to inform residents of their right to request a reasonable accommodation to participate in the Grievance Process and in response to the underlying allegations.

Action Item: The proposed termination notice should clearly state that qualified individuals with disabilities may request a reasonable accommodation as necessary to participate in the Grievance Process. The proposed termination notice should also make clear that regardless of whether their termination is for criminal activity or not, residents make may a reasonable accommodation request at any point in the process.

HARM TO TENANTS IN RAD BUILDINGS

Based on DRM's investigation, some RAD tenants have been evicted after receiving Notices to Vacate that did not conform to the legal requirements. We are also concerned that residents are vacating their units after receiving notice, but before a hearing in court, as a result of receiving notices that failed to provide the required notice of due process and tenant rights. **In our investigation of court filings over the past year, we identified seven residents who were evicted or had warrants of restitution issued.** We have no way of knowing how many residents unwittingly vacated their units after receiving a Notice of Lease Termination that was likely legally flawed, as this information has not been provided to us by the Respondents.

To substantiate our allegations that the notice and grievance rights of residents are routinely ignored by the Respondents, we reviewed Breach of Lease cases filed in the District Court of Maryland for Baltimore City from June 21, 2016 through September 2017, and reviewed the Notices to Vacate or Notices of Termination appended to each filed complaint. DRM reviewed all Breach of Lease filings in the District Court of Maryland that it could trace back to a Respondent. Our review indicates that **every** Breach of Lease case we reviewed that was filed by the Respondent RAD Owner/Management Entities contained legal errors that deprived the affected resident of adequate Notice, as required under Section 6 of the United States Housing Act, and in the majority of instances did not include adequate notice of the Resident grievance rights under these RAD Conversions. Our investigation could only identify residents who did **not** vacate after the expiration date of the Notice, and did not reach residents who may have complied with a Termination Notice that did not comport with the Notice and Grievance requirements under the RAD Notice, or the LTA Criteria. We also only reviewed those lease terminations that we could trace back to Respondents. Further, upon information and belief, DRM asserts that the Respondents routinely fail to provide residents with a fourteen (14)

day notice of termination for failure to pay rent.² A chart summarizing the short-comings of each Termination Notice we reviewed is attached as **Exhibit 4**.

DRM has brought our concerns to HABC on two separate occasions to address our complaints about Respondents' failure to comply with required lease termination procedures and the RAD LTA Grievance Policy. In response, HABC drafted a template of suggested lease termination language for the Respondents to use. Most respondents have declined to use the template. Additionally, DRM noted several deficiencies in the suggested language, but HABC refused to make the corrections. HABC has also sent a general reminder letter to the Respondents' about what they agreed to, but failed to identify the issues that caused HABC to send the letter or advise on corrective action Owner-Entities could take. HABC's efforts would not and do not adequately address the issues that we have raised.

We request that the Office of Recapitalization, in addition to reviewing lease termination notices that resulted in court filings, also review:

- i) Lease termination notices that did not result in Court filings because a resident vacated the unit;
- ii) Lease terminations resulting from failure to pay rent and filings for Failure to Pay Rent cases, and whether the appropriate and adequate 14-day notice to vacate was provided.

In sum, DRM asserts that Respondents routinely ignore the benefits afforded to residents of RAD converted properties in Baltimore City and treat residents as if they were only residents of HUD subsidized properties under 24 C.F.R. § 880.

This is contrary to the letter and spirit of the RAD program. DRM desires to get ahead of this routine failure by the Respondents to provide access to the grievance process before the denial of resident rights becomes an entrenched and routine feature of the RAD program in Baltimore City. To this complaint we have attached a listing of each RAD Property, along with its Owner and Management Agent (**Exhibit 5**).

REQUESTED ACTION

In addition to the "Action Items" outlined above, DRM is requesting HUD's Office of Recapitalization consider the following actions:

- a. A comprehensive review of all practices of the Respondents to assess their compliance with the RAD Authorizing Statutes, the RAD Notice, the RAD Conversion Commitment (RCC), the RAD Use Agreement, and the RAD HAP Agreements;
- b. The creation of a remediation program to identify residents and tenants adversely affected by the routine failure of the Respondents to provide adequate legal notices to residents and tenants of RAD properties concerning their rights;

² DRM has not been able to review these records because failure to pay rent records are maintained in paper form only and records may only be searched if the Court date is known.

- c. Require Respondents, their agents, employee, attorneys, and other representatives to undergo adequate training on the requirements of the RAD Program, particularly the requirements relating the residents rights;
- d. Require HABC to develop training materials on RAD LTA Grievance Policy and other tenant rights specifically on lease terminations, grievance rights, and other tenant rights that are part of parcel of the Rental Assistance Demonstration Program;
- e. The creation of a Uniform Lease Termination Notice to be utilized by each Respondent (attached as **Exhibit 6**) in every proposed lease termination.
- f. The creation of a Voluntary Compliance Agreement with the Respondents to ensure their long-term compliance with the requirements set forth in the RAD Authorizing Statute, the RAD Notice, the RAD Conversion Commitment, the RAD Use Agreement, and the RAD HAP Agreements.

We are willing to discuss further the complex legal interaction between legally flawed Notices, tenants' due process rights, and the RCC agreement if that would be helpful to you. Please let us know what would be most helpful to you.

Respectfully Submitted,



David Prater, Esq.

Kira Wilpone-Welborn, Esq.



Attachments:

Exhibit 1: RAD LTA Grievance Policy and Appeals Procedure

Exhibit 2: RAD Conversion Commitment (R.C.C.) Example

Exhibit 3: March 25, 2015 letter from HUD to Paul Graziano regarding HABC's Request for Waivers of PBRA Provisions under Rental Assistance Demonstration

Exhibit 4: DRM Chart Summarizing Lease Termination Shortcomings

Exhibit 5: List of Each RAD Property with Owner/Agent

Exhibit 6: Uniform Lease Termination Notice to be used by each Respondent